

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
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UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

EDWIN K. SLAUGHTER, et al,

Plaintiffs,

vs.

UPONOR, INC., et al.

Defendants.

Case No.: 2:08-CV-01223-RJC-(GWF)

**ORDER GRANTING IN PART AND
 DENYING IN PART HUGHES
 WATER & SEWER LP'S MOTION
 FOR FEES AND COSTS [#352]**

This case is a class action products liability lawsuit regarding allegedly defective plumbing components. Defendants allegedly manufactured, marketed, distributed, and/or installed allegedly defective plumbing components. Defendants are Uponor, Inc. ("Uponor"); RCR Plumbing and Mechanical, Inc. ("RCR"); Interstate Plumbing & Air Conditioning ("Interstate"); United Plumbing, LLC ("United"); Ferguson Enterprises, Inc. ("Ferguson"); and Hughes Water & Sewer LP ("HUGHES"); (all defendants, collectively, "Defendants"). Edwin K. Slaughter, Rebecca Flinn, Mel Healey, and Carol Healey (collectively, "Plaintiffs") allege that the defective plumbing components caused harm, or are likely to cause harm in the future, to their residences located in Clark County, Nevada.

Now before the Court is HUGHES' Motion for Attorneys' Fees and Costs. [#352]. As stated herein, the Motion is Granted, in part and Denied in part:

FINDINGS OF FACT

The Court finds as follows:

1. On July 28, 2008, Plaintiffs filed the present action, on behalf of themselves and all others similar situated, in the District Court for Clark County, Nevada. (Pet. For Removal (#1), Ex. 1). Defendants are allegedly engaged in the business of designing, developing, manufacturing, distributing, marketing, selling, and installing the Wirsbo PEX plumbing system, Wirsbo brass fittings, and other plumbing materials (*Id.* at ¶¶ 5-11);

2. Plaintiffs alleged that the Wirsbo brass fittings installed in certain residences throughout Clark County, Nevada, were defective. The Wirsbo fittings allegedly reacted with the water in Clark County in such a manner as to cause a chemical reaction known as dezincification. As a result of dezincification, Plaintiffs further alleged that zinc leached out of the Wirsbo brass fittings, which impaired residences' plumbing systems and homes. (*Id.* at ¶¶ 22-33). Plaintiffs filed suit under the following theories of liability: (1) product liability; (2) strict liability, (3) breach of express warranty; (4) breach of implied warranty; (5) breach of warranty of merchantability; and (6) negligence. (*Id.* at ¶¶ 34-93);

3. On September 15, 2008, Defendant Uponor, Inc. removed the lawsuit from state court to federal court pursuant to the Class Action Fairness Act ("CAFA"). [#1];

4. On April 20, 2009, Plaintiffs filed a Motion for Class Certification. [#110] The Court thereafter permitted a period of discovery, and through various extensions, set a hearing for Plaintiffs' Motion for Class Certification on January 25, 2010;

5. A substantial part of the discovery conducted by Defendants to date has been to defend against Plaintiffs' Motion for Class Certification;

6. Throughout the discovery period, Defendants attended and participated in numerous depositions, including an estimated nine (9) out of state depositions, reviewed and investigated thousands of pages of documentation disclosed by the Plaintiffs, retained experts, attended destructive testing and/or visual inspections of at least five (5) homes, and attended metallurgical testing of plumbing components selected by Plaintiffs at Seal Laboratories in El Segundo, California. This discovery was all primarily geared towards defeating Plaintiffs' Motion for Class

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1 Certification;

2 7. Since the initiation of this case, Defendants have engaged in numerous motion filings
3 and arguments primarily relating to discovery and concerns of class certification;

4 8. On December 3, 2009, Plaintiffs filed a Notice of Withdrawal of Motion for Class
5 Certification [#278]. On December 7, 2009, Plaintiffs filed a Motion to Voluntarily Dismiss the
6 entire action. [#285]. All defendants except Uponor, Inc. opposed the motion and requested that
7 this Court dismiss the matter with prejudice and allow the defendants to move for fees and costs
8 (hereinafter, the "Moving Defendants") [#314, 316, 318, 319, 320 and 321];

9 9. On January 5, 2010, this Court held a hearing on Plaintiffs' Motion to Voluntarily
10 Dismiss Without Prejudice, this Court stated that it would only dismiss with prejudice and that the
11 issue of attorney's fees and costs would be reserved for further hearing [#344, 345];

12 10. On January 27, 2010, this Court entered an order granting the Motion to Voluntarily
13 Dismiss WITH PREJUDICE. [#349]. The Court retained jurisdiction to allow the defendants to
14 move for fees and costs;

15 11. Defendant HUGHES filed a Motion for Fees and Costs [#352] on February 10, 2010
16 ("Fee Motion"). The Fee Motion requested fees in the amount of \$229,261.93 and costs in the
17 amount of \$12,941.49, including a Bill of Costs documenting \$5,898.05 in taxable costs [#352].
18 The Bill of Costs provides an affidavit attesting that such costs were reasonable and necessarily
19 incurred, and provided invoices for the taxable costs. On March 1, 2010, Plaintiffs filed a
20 Response to Motions for Attorneys' Fees [#363], addressing each of the Moving Defendants'
21 request for fees and costs. On March 11, 2010, HUGHES filed a Reply in Support of Motion for
22 Fees and Costs. [#372];

23 12. On April 29, 2010, HUGHES filed a Supplement to its Fee Motion [#399]
24 ("Supplement"), providing evidence of additional fees and costs incurred by HUGHES in this
25 action, and requesting a grand total of \$255,578.90 in fees and \$13,087.39 in costs;

26 13. This case presents exceptional circumstances given Plaintiffs' initiation and pursuit
27 of the case and class action certification prior to withdrawal of the motion for class certification
28 and dismissal of the case, combined with Plaintiffs' stated intention to reinitiate the class action

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1 litigation in state court;

2 14. An award of fees to the Moving Defendants is warranted as the Moving Defendants
3 will be forced to engage in duplicative effort and expenses by Plaintiffs' decision to dismiss the
4 present action but continue to pursue their class action in state court;

5 15. While the bulk of fees incurred by defendants have value in subsequent
6 proceedings, some significant portion of the fees incurred will be duplicative. The Moving
7 Defendants should not be forced to incur the same fees where the fees have been caused by
8 Plaintiffs' decision to assert class action status in this litigation and later withdraw their motion
9 based on their decision to pursue the same class in a different forum;

10 16. Local Rule 54-16 outlines the following factors to consider when awarding
11 attorney's fees: (1) the results obtained and the amount involved; (2) the novelty and difficulty of
12 the questions involved; (3) the skill requisite to perform the legal services properly; (4) the
13 preclusion of other employment by the attorney due to acceptance of the case; (5) whether the fee
14 is fixed or contingent; (6) the time limitations imposed by the client or circumstances; (6) the
15 experience, reputation, and ability of the attorneys; (7) the undesirability of the case, if any; (8) the
16 nature and length of the professional relationship with the client; and (9) awards in similar cases;

17 17. HUGHES has addressed the factors stated in LR 54-16 to the satisfaction of this
18 Court;

19 18. In the Fee Motion, Defense counsel attests that the law firm billed an hourly rate of
20 \$305.00 for counsel's time and an hourly rate of \$150.00 for paralegal time. Defense counsel
21 further attests to the number of hours the law firm spent in defending HUGHES in this action.
22 Plaintiffs did not object to either the hourly rates or the numbers of hours billed;

23 19. This Court is familiar with the customary billing rates for legal services in similar
24 cases and finds that these hourly rates are reasonable for the legal services rendered;

25 20. This Court is familiar with this action and the effort required by defense to defend
26 against the class certification motion and finds that the number of hours expended by HUGHES
27 was reasonable;

28 21. The Fee Motion and Supplement attach an affidavit of Rosemary Missisian, Esq.

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1 which authenticated the information contained in the pleadings and confirming that submitted fees
2 and costs were reviewed and that the fees and costs charged were reasonable, necessary and actual;

3 22. HUGHES provided an itemization and description of legal services provided and
4 the time expended, as well as supporting affidavits of counsel. The majority of the Moving
5 Defendants included affidavits of counsel categorizing and summarizing the breakdown of fees,
6 costs and tasks relative to the fees requested. This Court finds that requiring a delineation of fees
7 in line-by-line, date-by-date format, would require both parties to incur more fees and effort and
8 that the Court is satisfied with the affidavits of counsel;

9 23. As a result of the numerous defendants requesting fees, the burden of preparing and
10 reviewing redacted line-by-line itemization, the Court finds that an in-gross ruling of fees is
11 appropriate and finds that an award of 1/5 of fees incurred by each defendant is a reasonable award
12 of fees;

13 24. At the hearing on May 10, 2010, this Court awarded HUGHES 100% of its taxable
14 costs and 20% of all attorneys' fees and non-taxable costs and ordered the re-taxing of costs to
15 confirm that no amount of attorney's fees were included in the original taxation of costs.

16 25. On May 24, 2010, HUGHES filed its amended Bill of Costs. [#419] confirming its
17 taxable costs in the amount of \$5,898.05 and further confirming that those costs did not include
18 any attorneys' fees or other matters not properly taxable under the Local Rules. All other
19 Defendants except Uponor filed amended Bill of Costs;

20 26. On June 4, 2010, Plaintiffs filed an Objection to Bills of Costs and Motion to Re-
21 Tax [#431], and thereafter filed a Motion for Re-Taxation of Costs on June 9, 2010 [#432]. On
22 June 17, 2010, HUGHES filed Reply to Plaintiffs' Objection and Motion to Re-Tax, and an
23 Amended Order Granting in Part HUGHES' Motion for Fees and Costs [#435-436]. The
24 Amended Order attempted to address the errors set forth in Plaintiffs' Motion to Re-Tax and
25 reduced the taxable costs to \$5,304.37, consistent with Plaintiffs' pleading;

26 27. On August 13, 2010, a hearing was held on Plaintiffs' Motion to Re-Tax. On
27 September 20, 2010, this Court issued a formal Order re-taxing HUGHES' costs from \$5,898.05 to
28 \$5,304.37.

CONCLUSIONS OF LAW

1 Defendant provides for a reasonable collective fee award;

2 8. The award of attorneys' fees and non-taxable costs is specifically entered against the
3 named Plaintiffs, and not counsel for the Plaintiffs;

4 9. This Court finds that it is reasonable and appropriate to award HUGHES taxable
5 costs in the amount of \$5,304.37, and therefore awarded such amount in its September 20, 2010,
6 Order [#453];

7 10. Defendants are not entitled to pre-judgment interest. However, Defendants are
8 entitled to post-judgment interest from the date of entry of the final Judgment of Dismissal with
9 Prejudice, January 27, 2010, until the award is satisfied in full;

10 11. To the extent this Court's Conclusions of Law should be more appropriately set forth
11 as a finding of fact, it shall be deemed as such.

12 ORDER

13 IT IS HEREBY ORDERED that HUGHES' Motion for Attorneys' Fees and Costs [#352] is
14 GRANTED in part and DENIED in part. HUGHES is awarded **\$52,672.38**, which represents
15 twenty percent (20%) of its requested attorneys' fees and non-taxable costs. Combined with the cost
16 award of **\$5,304.37**, this Court awards HUGHES a total amount of **\$57,976.75** for fees and costs.


17 This Court FURTHER ORDERS an award of post-judgment interest at the federal judgment
18 rate to the moving Defendants. The weekly average of the 1-year constant maturity Treasury yield
19 for the week before January 27, 2010 is 0.31%. The daily rate for post-judgment interest is
20 .00000849315 (0.0031/365). Post-judgment interest will accumulate at \$0.49/day until satisfied.

21 IT IS SO ORDERED

22 
23 HONORABLE ROBERT C. JONES
24 UNITED STATES DISTRICT JUDGE

DATED: November 29, 2010

25 Submitted by:

26 
27 Rosemary Missislian, Esq.
28 WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
Attorney for Defendant Hughes Water & Sewer LP
DATED this 30th day of September, 2010.

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